



## United Kingdom - Shamima Begum v Secretary of State for the Home Department

Shamima Begum, aged 15, left the UK for Syria to live with the Islamic State of Iraq and Syria (“ISIS”). She was deprived of her British citizenship by a decision taken by the Secretary of State for the Home Department on national security grounds under section 40(2) of the British Nationality Act 1981. On appeal from the Special Immigration Appeals Commission (“SIAC”), the Court of Appeal held that the decision to deprive Begum of her citizenship was lawful and dismissed the appeal.

**Case name (in original language) :** Shamima Begum v Secretary of State for the Home Department

**Case status:** Decided

**Case number:** CA-2023-000900

**Citation:** [2024] EWCA Civ 152

**Date of decision:** 23/02/2024

**State:** United Kingdom

**Court / UN Treaty Body:** Court of Appeal (Civil Division), United Kingdom

**Language(s) the decision is available in:** English

**Applicant's country of residence:** Syria

**Legal instruments:** European Convention on Human Rights (ECHR)

**Key aspects:** Deprivation of nationality

**Relevant Legislative Provisions:**

British Nationality Act 1981 (“**BNA 1981**”) (as amended by the Nationality and Borders Act 2022) – sections 40, 40A

Special Immigration Appeals Commission Act 1997 (“**SIACA 1997**”) – section 2B

European Convention on Human Rights (“**ECHR**”) – articles 4, 8

Council of Europe Convention on Action against Trafficking (“**ECAT**”) – articles 4, 26

Equality Act 2010 (“**EA 2010**”) – sections 149, 192

## **Facts**

In 2019, the Secretary of State for the Home Department (“SSHD”), acting under section 40(2) of the British Nationality Act 1981, made the decision to deprive the applicant, Shamima Begum, of her British citizenship on national security grounds (the “Deprivation Decision”). She was aged 19 at the time.

Since the applicant's parents were of Bangladeshi origin, she had Bangladeshi citizenship until her 21st birthday but this had no practical use since she would not be able or permitted to enter Bangladesh.

The applicant was born in the UK and lived in London until February 2015 when she travelled to Syria aged 15, with two friends from school, to live amongst ISIS, a terrorist organisation. Within days of arriving in Syria, she was married off to an ISIS fighter. The applicant spent the majority of the next four years pregnant and gave birth to three children that all died in infancy.

In January 2019, the ISIS self-styled caliphate collapsed. The applicant (nine months pregnant at the time) and her husband were captured by the Syrian Democratic Forces and taken to the Al-Hawl refugee camp in north-east Syria. While at the camp, the applicant gave interviews to print and TV journalists and there was a media campaign for her to be allowed back into the UK.

The applicant appealed to the Special Immigration Appeals Commission (SIAC) against the Deprivation Decision. She then sought permission to enter the UK so that she could participate in the proceedings before the SIAC but this was denied by the SSHD. The applicant appealed against the permission to enter refusal to the SIAC and brought a claim for judicial review in the Administrative Court. At a preliminary hearing, the SIAC dismissed the appeal and judicial review claims. The applicant sought judicial review of the decision of the SIAC and appealed to the Court of Appeal. The Court of Appeal allowed this appeal but there was a further appeal by the SSHD. The Supreme Court reversed the decision of the Court of Appeal and held that the SSHD acted lawfully in refusing her the permission to enter the country.

The Supreme Court gave the applicant the choice of staying the SIAC appeal against the Deprivation Decision or proceeding without being able to give evidence or be physically present. The applicant chose to proceed with the appeal against the

Deprivation Decision and this was finally heard in late 2022. The SIAC dismissed the applicant's appeal and held that the Deprivation Decision was lawful.

### **Legal arguments by the applicant**

The applicant brought the five grounds of appeal described below.

#### *Ground 1 - Trafficking (ECHR Article 4)*

The SSHD was required to consider: (a) whether Begum was a potential victim of trafficking; (b) whether there had been any failures by the State to protect her from trafficking; (c) the legal obligations, owed under article 4, to her as a victim of trafficking; and (d) the fact that the Deprivation Decision would impede the State's ability to discharge its article 4 obligations.

After considering these issues, the SSHD had to decide whether deprivation was justified in the circumstances. By failing to consider these factors, the Deprivation Decision breached article 4 and the SIAC erred in its decision on this point.

Note, the SIAC made a finding of fact that the applicant had potentially been trafficked.

#### *Ground 2 - Trafficking (common law)*

The fact that the applicant had potentially been trafficked was a relevant consideration when determining whether it was in favour of the public good that she be deprived of her citizenship. The Deprivation Decision was illegal since it failed to consider this point and the SIAC had erred in its decision on this point.

#### *Ground 3 - De facto statelessness*

The Deprivation Decision was unlawful since the SSHD did not properly consider whether the applicant would be made de facto stateless since her Bangladeshi citizenship was of no practical value. The SIAC had correctly identified that this was a mandatory relevant consideration but erred in finding that the SSHD had properly considered the matter.

#### *Ground 4 - Procedural unfairness*

The SIAC had correctly held that the principles of natural justice are to be read into section 40 of the BNA 1981 and that the SSHD had breached these principles by not

providing the applicant the opportunity to make representations before making the Deprivation Decision.

However, the SIAC misapplied *Simplex GE (Holdings) v SSE* [1988] P&CR 306 and incorrectly decided that the outcome would inevitably have been the same. The applicant could have put forward good reasons against the Deprivation Decision if afforded the chance.

#### *Ground 5 - The public sector equality duty (“PSED”)*

The Deprivation Decision breached the PSED since it would disproportionately apply to British Muslims of certain ethnic backgrounds (section 149(1)(a) of the Equality Act (EA) 2010) and/or detrimentally impact upon the relations between members of the Muslim community and others (section 149(1)(c) of the EA 2010). The SIAC incorrectly (i) interpreted section 192 of the EA 2010 when it decided that the SSHD had a valid defence; and (ii) concluded that the SIAC had not breached sections 149(1)(a), (c) of the EA 2010.

Even if section 192 applied, it had to be assessed whether the deprivation decision was proportionate by reference to factors mandated by the PSED rather than whether it was proportionate in a more general sense.

#### **Legal arguments by the opposing party**

In addition to asking the SIAC decision to be upheld, the SSHD brought additional reasons that the SIAC was correct in their ruling on grounds 1, 4 and 5.

#### *Ground 1 - Trafficking (ECHR Article 4)*

Since the applicant was not within the jurisdiction of the UK for the purposes of article 1 of the ECHR, an issue under article 4 could not arise. The SIAC erred in failing to consider this primary point.

#### *Ground 4 - Procedural unfairness*

Individuals do not have a right to make representations in advance of a decision to deprive them of their citizenship. Section 40 of the BNA 1981 is an exhaustive statutory code and does not contain such a right.

There is no obligation to give prior notice to a deprivation order because Parliament has provided the right to a full merits appeal. The SIAC was incorrect to depart from *Al-Jedda (No. 2) v Secretary of State for the Home Department* (SC-66-2008, 18 July 2014), which held that the recipient of a deprivation decision did not have right to make prior representations to the decision-maker since any unfairness was remedied at the appellate level.

If there was a duty to hear the applicant's representations, there was no public law error committed by the SSHD.

Note, the SSHD maintained in full his argument used at the SIAC proceedings in respect of the *Simplex* case.

#### *Ground 5 - The PSED*

The SIAC was incorrect to hold that the PSED applied even though the applicant was abroad at the time the Deprivation Decision was taken. The PSED does not apply to persons outside the UK.

### **Decision & Reasoning**

The appeal failed on all grounds.

#### *Ground 1 - Trafficking (ECHR Article 4)*

The Court of Appeal considered each of the duties under article 4.

With respect to the protective duty, it was important that the SIAC had found that “*arguabl[y]*” the police, school and local authority failed to take reasonable measures to prevent the applicant from going to Syria. The applicant sought to rely on this as the foundational point of her submissions, but this was rejected by the Court since (i) the SIAC's finding was merely “*arguable*”; and (ii) there had been four years since the applicant left the UK and the deprivation decision so there was a “*lack of any causal link between the possible breaches of the protective duty in 2015 and the deprivation decision in 2019*” (paragraph 78).

The repatriation obligation (article 16 of ECAT), which corresponds to the recovery duty under article 4, was adopted as a matter of policy by the Home Office. The Court did not think that this was sufficient to place the SSHD in breach of his own guidance when exercising his section 40 BNA 1981 power.

The UN Special Rapporteur on trafficking in persons had stated that the non-punishment principle extended to non-repatriation and the applicant relied on this to argue that the Deprivation Decision was a breach of article 4. The Court was not satisfied that the ECtHR would uphold the UN Special Rapporteur's view on the matter and dismissed this argument.

The Court also dismissed the argument that an investigation, under the article 4 investigative obligation, could only be effective if the applicant were in the UK. This was because (i) this would amount to an obligation to repatriate; (ii) an obligation to repatriate would be inconsistent with the Supreme Court's decision that found the permission to enter refusal lawful; and (iii) the investigative obligation is only to take reasonable steps to investigate and does not go further.

Further, since there was no breach of article 4, the UK could not be under a restitutionary duty to restore the applicant to the position she would have been in if the purported breach had not occurred.

The Court of Appeal, in conclusion, stated in paragraph 91:

*"We do not accept that an individual who is assessed as presenting a risk to national security must be repatriated, or even that the Secretary of State is required to consider her repatriation, in order to meet obligations which might be owed under the protective duty, the recovery duty or the investigative duty (noting that any putative investigation would concern offences committed by other people, or State failures to protect her, four years earlier). Further, we do not accept that the non-punishment principle extends to a decision to deprive her of her citizenship on national security grounds or that a restitutionary duty exists even arguably on these facts."*

However, the Court rejected the SSHD's argument that the fact that the applicant was not in the UK was a determinative primary point since this lacked nuance.

#### *Ground 2 - Trafficking (common law)*

The Court found that the SIAC had correctly held that the possibility of trafficking had been considered and the Deprivation Decision was taken while accounting for this.

The applicant argued that, during national security risk assessment, the intelligence services did not have the requisite competence to discern whether the applicant went to Syria voluntarily and this was a material factor to the question of a national security threat.

The Court stated that the *"SIAC was entitled to find, as the specialist tribunal established by Parliament, that the issue of whether and to what extent Ms Begum's travel to Syria had been voluntary was within the expertise of the intelligence agencies advising the Secretary of State"* (paragraph 97).

### *Ground 3 - De facto statelessness*

It was not necessary for the Court to consider what would amount to *de facto* statelessness since there was evidence, in the form of a ministerial submission, that the fact that the applicant would be *de facto* stateless was considered by the SSHD. The Deprivation Decision was taken in spite of this and the SSHD was entitled to do so.

The Court stated that *"Ms Begum had nowhere else to go. Until her 21st birthday in 2021 she had Bangladeshi citizenship by descent but there was no realistic possibility of her being able or permitted to enter that country. The appendix to the ministerial submission made this clear, though in the context of whether she was at risk of treatment contrary to ECHR Article 2 or Article 3. As SIAC found [...], this was sufficient to bring the issue to the attention of the Secretary of State, if he did not know it already. Despite knowing that she had nowhere else to go, in all practicality, the Secretary of State nonetheless decided that to deprive her of her British citizenship on grounds that to do so was conducive to the public good and in the interests of national security. He took that matter into account. The decision cannot be impugned on the basis that he did not do so. On the basis of the open arguments applied to the evidence that we have seen in open and closed, Ground 3 fails."* (paragraph 102)

### *Ground 4 - Procedural unfairness*

This ground was dealt with by breaking it up into two parts.

In the first part, the Court considered whether Parliament had by necessary implication excluded a right to prior representation. On this point, the Court agreed with the arguments of the SSHD that there was no such right. The Court stated, at

paragraph 112:

*“The existence and distinctive nature of [the] right of appeal [in section 2B of the SIACAA 1997], and the risk of pre-emptive action by the appellant if prior notice is given, remain in our view compelling reasons to construe s 40(5) as excluding the right of prior consultation before a deprivation decision is made on the grounds of national security, as was held in Al-Jedda.”*

In the second part, the Court found that SIAC’s use of the *Simplex* case was correct. The Court stated at paragraph 120:

*“As was emphasised in U3 at first instance and on appeal, SIAC’s role is rigorously to test the assessment which underpins the decision under appeal. If SIAC finds there has been an error in that assessment (of law or fact), it is for SIAC to consider whether that error is material in the sense that it might have affected the outcome.”*

#### *Ground 5 – The PSED*

While using principles of statutory construction, the Court held that section 192 of the EA 2010 applied in the situation. This was because it contained broad language (“*doing... anything*”) and, with a view to the wider statutory context, the provision was under the heading “General Exceptions”.

The Court rejected the notion that section 192 of the EA 2010 required a separate proportionality analysis with reference to the factors under the PSED.

It was unnecessary to consider the SSHD’s submission relating to extra-territorial effect of the EA 2010.

### **Decision documents**

[Judgment](#)

### **Outcome**

The Court of Appeal dismissed the appeal and held that the decision of the SSHD to deprive the applicant of her citizenship was lawful.

There was an open trial and a closed trial for this case. This summary mainly considers the open judgment of the Court (made in lieu of the open arguments) since only a small number of extracts from the closed judgment have been made public.



## **Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

BBC news report dated 23 February 2024 linked [here](#).

Judiciary of England & Wales press summary linked [here](#).

Analysis by barristers' chambers linked [here](#).

Analysis by barristers' chambers linked [here](#).

Article by Rights & Security International linked [here](#).

ENS blog, Alison Harvey, [Shamima Begum: now stateless, but still deprived of her British citizenship](#) (March 2023)

ENS blog, Alison Harvey, [Shamima Begum Supreme Court judgment: What are the implications for statelessness cases?](#) (March 2021)

ENS blog, Alison Harvey, [Burden of proof in statelessness cases and the meaning of "by operation of its law"](#) (January 2020)

United Kingdom - [Begum v SIAC \(16 July 2020\) & Begum v SSHD \(7 February 2020\)](#)

## **Caselaw cited**

Secretary of State for the Home Department v Rehman [2001] UKHL 47

[R \(Begum\) v Special Immigration Appeals Commission \[2021\] UKSC 7](#)

P3 v Secretary of State for the Home Department [2021] EWCA Civ 1642

U3 v Secretary of State for the Home Department [2023] EWCA Civ 811

R (D4) v Secretary of State for the Home Department [2022] EWCA Civ 33

MS (Pakistan) v Secretary of State for the Home Department [2020] UKSC 9

R. (on the application of Marouf) v Secretary of State for the Home Department [2023] UKSC 23

R. (on the application of AB) v Secretary of State for Justice [2021] UKSC 28

Turani v Secretary of State for the Home Department [2021] EWCA Civ 438

VCL v United Kingdom (77587/12) [2021] 2 WLUK 541

R. (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52

M v Croatia (60561/14) [2020] 6 WLUK 634

Balajigari v Secretary of State for the Home Department [2019] EWCA Civ 673

R. (on the application of Goring-on-Thames Parish Council) v South Oxfordshire DC [2018] EWCA Civ 860

R. (on the application of DSD) v Parole Board for England and Wales [2018] EWHC 694 (Admin)

R. (on the application of Black) v Secretary of State for Justice [2017] UKSC 81

R. v Joseph (Verna Sermanfure) [2017] EWCA Crim 36

Ali v Secretary of State for the Home Department [2016] UKSC 60

Pham v Secretary of State for the Home Department [2015] UKSC 19

Al-Jedda v Secretary of State for the Home Department [2014] 7 WLUK 758

Bank Mellat v HM Treasury [2013] UKSC 39

R. (on the application of YH (Iraq)) v Secretary of State for the Home Department [2010] EWCA Civ 116

Rantsev v Cyprus (25965/04) [2010] 1 WLUK 30

Smith v North Eastern Derbyshire Primary Care Trust [2006] EWCA Civ 1291

A v Secretary of State for the Home Department [2004] UKHL 56

R. (on the application of West) v Parole Board for England and Wales [2002] EWCA Civ 1641

R. (on the application of Morgan Grenfell & Co Ltd) v Special Commissioners of Income Tax [2002] UKHL 21

Papamichalopoulos v Greece (A/330-B) [1995] 10 WLUK 406

Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 W.L.R. 759

R. v Chief Constable of Thames Valley Ex p. Cotton [1989] 12 WLUK 245

CREEDNZ Inc v Governor General [1981] 7 WLUK 287